

will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.164 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 2.161(f)(2);

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark;

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 2.161(f)(2). The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;

(2) Be flat and no larger than 8.5 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a “bulky specimen”), the Office will create a facsimile of the specimen that meets the requirements of the rule (*i.e.*, is flat

and no larger than 8.5 inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the record. In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD-ROM, or a specimen in another appropriate medium.

(3) Be a digitized image in .jpg or .pdf format, if transmitted through TEAS.

[64 FR 48924, Sept. 8, 1999, as amended at 67 FR 79522, Dec. 30, 2002; 68 FR 55769, Sept. 26, 2003; 73 FR 47686, Aug. 14, 2008; 73 FR 67773, Nov. 17, 2008; 74 FR 54910, Oct. 26, 2009; 75 FR 35976, June 24, 2010]

§ 2.162 Notice to registrant.

When a certificate of registration is originally issued, the Office includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 of the Act. However the affidavit or declaration must be filed within the time period required by section 8 of the Act even if this notice is not received.

[64 FR 48925, Sept. 8, 1999]

§ 2.163 Acknowledgment of receipt of affidavit or declaration.

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) If the affidavit or declaration is filed within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

(b) A response to the refusal must be filed within six months of the date of issuance of the Office action, or before the end of the filing period set forth in section 8(a) of the Act, whichever is later. The response must be signed by the owner, someone with legal authority to bind the owner (*e.g.*, a corporate officer or general partner of a partnership), or a practitioner qualified to practice under § 11.14 of this chapter, in accordance with the requirements of § 2.193(e)(2).

(c) If no response is filed within this time period, the registration will be cancelled, unless time remains in the grace period under section 8(a)(3) of the Act. If time remains in the grace period, the owner may file a complete, new affidavit.

[75 FR 35976, June 24, 2010]